

DOUGLAS HAN (SBN 232858)
 SHUNT TATAVOS-GHARAJEH (SBN 272164)
JUSTICE LAW CORPORATION
 751 North Fair Oaks Avenue, Suite 101
 Pasadena, California 91103
 Tel: (818) 230-7502
 Fax: (818) 230-7259

Attorneys for Plaintiffs

FILED
 Superior Court of California
 County of Los Angeles

07/25/2023

David W. Slayton, Executive Officer / Clerk of Court

By: I. Arellanes Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES**

EDGAR MATA and ELVIS OLIVARES,
 individually, on behalf of other members of the
 general public similarly situated, and on behalf
 of aggrieved employees pursuant to the Private
 Attorneys General Act ("PAGA");

Plaintiffs,

v.

DAY-LEE FOODS INC., a California
 corporation; and DOES 1 through 100,
 inclusive;

Defendants.

Case No.: 20STCV21664

Assigned for All Purposes to:
 Honorable Kenneth R. Freeman
 Department 14

CLASS ACTION

**~~AMENDED PROPOSED~~ ORDER OF
 FINAL APPROVAL AND JUDGMENT**

Hearing Date: May 30, 2023
 Hearing Time: 10:00 a.m.
 Hearing Place: Department 14

Complaint Filed: June 4, 2020
 FAC Filed: December 6, 2021
 Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiffs Edgar Mata and Elvis
2 Olivares' ("Plaintiffs," "Plaintiff Mata," and "Plaintiff Olivares") Motion for Final Approval of
3 Class Action Settlement, and considering the papers submitted in support of the motion,
4 including the Amended Joint Stipulation and Settlement Agreement ("Settlement Agreement,"
5 "Settlement," or "Agreement"), hereby FINDS AND ORDERS:

6 Plaintiffs and Defendant Day-Lee Foods, Inc. ("Defendant") entered the Settlement
7 Agreement on or about May 12, 2022, to settle this lawsuit.

8 The Court entered an Order dated August 15, 2022 preliminarily approving the settlement
9 of this lawsuit ("Preliminary Approval Order"), consistent with the Code of Civil Procedure
10 section 382 and California Rule of Court 3.769, ordering notice to be sent to Class Members,
11 scheduling a Final Approval Hearing, and providing Class Members with an opportunity to
12 object to the Settlement or exclude themselves from the Class.

13 The Court held a Final Approval Hearing on May 30, 2023 to determine whether to give
14 final approval to the Settlement of this lawsuit.

15 1. Incorporation of Other Documents. This Amended Order of Final Approval and
16 Judgment ("Order and Judgment") incorporates the Settlement Agreement. Unless otherwise
17 provided herein, all capitalized terms in this Order and Judgment shall have the same meaning as
18 set forth in the Settlement Agreement.

19 2. Jurisdiction. Because adequate notice has been disseminated and the Class been
20 given the opportunity to request exclusion, the Court has personal jurisdiction with respect to the
21 claims of all Class Members. The Court also has subject matter jurisdiction over this lawsuit,
22 including jurisdiction to approve the Settlement and grants final certification of the Class.

23 3. Final Class Certification. The Court finds the Class satisfies all applicable
24 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due
25 process. The Court certifies the Class consisting of any and all persons who have been employed
26 by Defendant as non-exempt employees in California at any time from June 4, 2016, to
27 September 15, 2021 ("Class," "Class Members," and "Class Period"). There are five hundred
28

seventy (570) Class Members who did not submit valid and timely requests to exclude themselves from the Settlement (“Participating Class Members”).¹

4. Adequacy of Representation. Class Counsel fully and adequately represented the Class for purposes of entering and implementing the Settlement and satisfied the requirements of Code of Civil Procedure section 382.

5. Notice Packet. The Court finds the Notice of Class Action Settlement (“Class Notice”) and the Election Not to Participate In (“Opt Out” From) Class Action Settlement (“Exclusion Form”) (collectively, known as the “Notice Packet”) and its distribution to Class Members were implemented pursuant to the Settlement and this Court’s Preliminary Approval Order. The Court also finds the Notice Packet:

a. constitutes notice reasonably calculated to apprise Class Members of: (i) pendency of this lawsuit; (ii) material terms and provisions of the Settlement and their rights; (iii) their right to object to any aspect of the Settlement; (iv) their right to exclude themselves from the Settlement; (v) their right to receive an Individual Settlement Share; (vi) their right to appear at the Final Approval Hearing; and (vii) binding effect of the orders and judgment in this lawsuit on all Participating Class Members;

b. constitutes notice that fully satisfied the requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due process;

c. constitutes the best practicable notice to Class Members under the circumstances of this lawsuit; and

d. constitutes notice reasonable, adequate, and sufficient to Class Members.

6. Final Settlement Approval. The terms and provisions of the Settlement Agreement have been entered in good faith and are the product of arm’s-length negotiations by experienced counsel who have done a meaningful investigation of the claims. The Settlement Agreement and all its terms and provisions are fully and finally approved as fair, reasonable,

¹ Phoenix mailed Notice Packets to five hundred seventy-three (573) Class Members and received three (3) requests for exclusion. Thus, there are five hundred seventy (570) Participating Class Members.

adequate, and in the best interests of the Parties. The Parties are hereby directed to implement the Settlement Agreement according to its terms and provisions.

7. Binding Effect. The terms and provisions of the Settlement and this Order and Judgment are binding on Plaintiffs, Participating Class Members, Eligible Aggrieved Employees, and their spouses, heirs, registered domestic partners, executors, administrators, successors, and assigns. In addition, those terms shall have res judicata and other preclusive effect in all pending and future claims, lawsuits, or other proceedings maintained by or on behalf of any such persons to the extent those claims, lawsuits, or other proceedings involve matters that were or could have been raised in this lawsuit and are encompassed by the Released Claims and Private Attorneys General Act of 2004 (“PAGA”) Released Claims. The Settlement will have no binding effect upon, and provide no res judicata preclusion to, those Class Members who have submitted timely requests for exclusion.

8. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude any action to enforce the terms and provisions of the Settlement Agreement.

9. Release of Claims. Upon Defendant’s fulfillment of its payment obligations under section III (J)(9)(a) of the Settlement Agreement, Class Members, who do not submit a timely and valid request for exclusion, waive, release, promise never to assert in any forum, remise and forever discharge the Released Parties from the Released Claims for the time frame within the Class Period.

a. Effect of PAGA Settlement. Upon Defendant’s fulfillment of its payment obligations under section III (J)(9)(a) of the Settlement Agreement, California Labor and Workforce Development Agency (“LWDA”), and any other representative, proxy, or agent thereof, including, but not limited to, any and all Eligible Aggrieved Employees during the PAGA Timeframe, are barred from pursuing any action for civil penalties under PAGA, Labor Code section 2698, *et seq.*, against the Released Parties based on or arising out of alleged violations of Labor Code sections alleged in Plaintiff Mata’s letter to the LWDA and the

Operative Complaints. The scope of the release of the PAGA claims is limited to claims arising during the PAGA Timeframe.

b. Plaintiffs' Release of Claims and General Release. Upon Defendant's fulfillment of its payment obligations under section III (J)(9)(a) of the Settlement Agreement, and in exchange for the Class Representative Enhancement Payments to the Plaintiffs, in recognition of their work and efforts in obtaining the benefits for the Class, and undertaking the risk for the payment of costs in the event this matter had not successfully resolved, Plaintiffs provide a general release of claims for themselves and their respective spouse, heirs, successors, and assigns. Moreover, with respect to the General Release, Plaintiffs stipulate and agree that, as of the Effective Final Settlement Date, Plaintiffs shall be deemed to have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of section 1542 of the Civil Code, or any other similar provision under federal or state law.

c. Released Parties. The Released Parties include Defendant and any and all of its affiliated companies and its respective parent companies, subsidiaries, affiliates, shareholders, members, agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees) predecessors, successors, and assigns.

10. Class Representative Enhancement Payments. The Court finds the Class Representative Enhancement Payments of \$7,500, to be paid by Defendant to each Plaintiff out of the Gross Settlement Amount (totaling \$15,000), to be reasonable and appropriate. Class Representative Enhancement Payments are to be paid pursuant to the terms and provisions set forth in the Settlement Agreement.

a. The rationale for making enhancement payments is class representatives should be compensated for the expense and risk they incurred in conferring a benefit on the Class. Criteria courts consider include: (1) risk to the class representatives in commencing suit; (2) notoriety and personal difficulties; (3) amount of time and

1 effort spent by the class representatives; (4) duration of the litigation; and (5)
2 personal benefit (or lack thereof) enjoyed by class representatives.

- 3 b. The Court reviewed Plaintiffs' declaration outlining their involvement in this
4 matter. Given the risks inherent in their services as the class representatives,
5 duration of the case and time involved, and benefits created for the Class, the
6 Court approves the payment of the Class Representative Enhancement Payments
7 of \$7,500 to each Plaintiff (totaling \$15,000).

8 11. Attorney Fee Award and Cost Award. The Court finds the Attorney Fee Award
9 of \$665,000, to be paid out of the Gross Settlement Amount by Defendant to Class Counsel, to
10 be reasonable and appropriate. The Court further finds the Cost Award as reimbursement for
11 actual litigation costs incurred of \$17,907.81, to be paid by Defendant to Class Counsel out of
12 the Gross Settlement Amount, to be reasonable and appropriate. Such fees and costs are to be
13 paid pursuant to the terms and provisions set forth in the Settlement. Defendant shall not be
14 required to pay for any other attorneys' fees and expenses, costs, or disbursements incurred by
15 Class Counsel or any other counsel representing Plaintiffs or Class Members. Defendant shall
16 also not be required to pay for any other attorneys' fees and expenses, costs, or disbursements
17 incurred by Plaintiffs or Class Members in connection with or related in any manner to this
18 lawsuit, the Settlement, the settlement administration, and/or the Released Claims and PAGA
19 Released Claims.

- 20 a. The Court has an independent right and responsibility to review the requested
21 Attorney Fee Award and only award so much as it determines reasonable. (See
22 *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123,
23 127-28.) The Attorney Fee Award requested by Class Counsel of \$665,000 is
24 thirty-five percent (35%) of the common fund created for the benefit of the Class
25 and is supported by use of the percentage-fee method. (See *Laffitte v. Robert Half*
26 *International, Inc.* (2016) 1 Cal.5th 480, 504.) Considering the exceptional results
27 achieved, financial risk undertaken, novel and difficult nature of this litigation,
28 skills required, percentage fees award in previous and other cases, and contingent

fees charged in the marketplace, the Court finds the requested Attorney Fee Award is consistent with the marketplace, is reasonable, and is approved.

- b. The Court reviewed the declaration of Douglas Han regarding the costs expended in prosecuting this case. Under the terms of the Settlement, Class Counsel may seek reimbursement of up to \$20,000 in litigation costs. The Court finds Class Counsel expended \$17,907.81 in litigation costs, and such costs were reasonable. Thus, the Court approves the payment of the Cost Award of \$17,907.81 from the common fund for the reimbursement of Class Counsel's litigation costs.

12. Administration Costs. The Court finds Administration Costs of \$10,000, to be paid by Defendant to the Settlement Administrator out of the Gross Settlement Amount, to be reasonable and appropriate. The Administration Costs are to be paid pursuant to terms and provisions set forth in the Settlement Agreement.

- a. The Court reviewed the declaration of Taylor Mitzner from Phoenix Class Action Administration Solutions ("Phoenix"), the Court-approved Settlement Administrator. The Court finds notice was provided to the Class pursuant to the Preliminary Approval Order, constitutes the best practicable notice to the Class, and satisfied due process. The Court approves the payment of the Administration Costs of \$10,000 for Simpluris' services in administering the Settlement.

13. PAGA Payment. The Court finds the PAGA Payment of \$100,000, seventy-five percent (75%) of which (\$75,000) will be paid to the LWDA out of the Gross Settlement Amount and twenty-five percent (25%) of which (\$25,000) shall be distributed to Eligible Aggrieved Employees, on a pro rata basis, to be reasonable and appropriate. The PAGA Payment is to be paid pursuant to the terms and provisions set forth in the Settlement Agreement.

14. Funding of the Settlement. No later than twenty-one (21) calendar days after the Effective Final Settlement Date, Defendant shall deposit the Gross Settlement Amount of \$1,900,000 needed to pay the entire Gross Settlement Amount by wiring the funds to the Settlement Administrator. At this time, Defendant will also wire Defendant's portion of payroll taxes as the Class Members' current or former employer, which will be paid separately and in

1 addition to the Gross Settlement Amount, to the Settlement Administrator. Defendant shall also
2 at this time provide any tax information that the Settlement Administrator may need to calculate
3 each Participating Class Member's Individual Settlement Share. Within fourteen (14) calendar
4 days after the funding of the Settlement, the Settlement Administrator shall calculate and pay all
5 payments due under the Settlement.

6 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
7 Settlement is entitled to a presumption of fairness. In their moving papers, Plaintiffs contend the
8 Settlement was the product of arm's-length negotiations following extensive litigation,
9 discovery, and exchange of documentation. The negotiations were facilitated with the aid of
10 Steven J. Rottman, an experienced and well-respected mediator.

11 a. The fairness of the Settlement is shown by there being no objections to and three
12 (3) requests for exclusion from the Settlement. The Class Members who requested
13 exclusion are Etsuko Mizoguchi, Omar Amaya Zarate, and Hiromi Gambino.

14 b. The fairness of the Settlement is further illustrated by the gross *average*
15 Individual Settlement Share being approximately \$1,915.95, and the gross *highest*
16 Individual Settlement Share being about \$5,426.67.

17 16. Uncashed Checks. Participating Class Members must cash or deposit their
18 Individual Settlement Share checks within one hundred eighty (180) calendar days after the
19 checks are mailed to them. Uncashed settlement checks will be canceled and paid to the
20 California State Controller: Unpaid Wage Fund.

21 17. Modification of Settlement Agreement. The Participating Class Members are
22 hereby authorized, upon approval of the Court, to agree to and adopt amendments to or
23 modifications of the Settlement Agreement by an express written instrument signed by counsel
24 for all Parties or their successors-in-interest subject to the Court's approval. Such amendments or
25 modifications shall be consistent with this Order and Judgment and cannot limit the rights of
26 Participating Class Members under the Settlement Agreement.

27 ///

28 ///

1 18. Final Accounting and Compliance. The Court sets a nonappearance case review
2 for March 1, 2024 in Department 14. Plaintiffs shall file a compliance status report by February
3 28, 2024. Pursuant to Code of Civil Procedure section 384, the compliance status report shall
4 specify the total amount paid to Participating Class Members and the residual of the unclaimed
5 settlement funds that will be paid to the entity identified as the recipient of such funds in the
6 Settlement Agreement.

7 19. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and
8 Judgment. This Court expressly retains jurisdiction for the administration, interpretation,
9 effectuation, and/or enforcement of the Settlement Agreement and of this Order and Judgment,
10 and for any other necessary purpose, including, without limitation:

- 11 a. enforcing the terms and provisions of the Settlement and resolving any disputes,
12 claims, or causes of action in this lawsuit that, in whole or in part, are related to or
13 arise out of the Settlement or this Order and Judgment;
- 14 b. entering such additional orders as may be necessary or appropriate to protect or
15 effectuate this Order and Judgment approving the Settlement, and permanently
16 enjoining Plaintiffs from initiating or pursuing related proceedings, or to ensure
17 the fair and orderly administration of the Settlement; and
- 18 c. entering any other necessary or appropriate orders to protect and effectuate this
19 Court's retention of continuing jurisdiction.

20 The Motion for Final Approval of Class Action Settlement, Attorney Fee Award, Cost
21 Award, and Class Representative Enhancement Payments is GRANTED. The Settlement
22 Administrator is directed to carry out the terms of the Settlement Agreement forthwith.

23 ///

24 ///

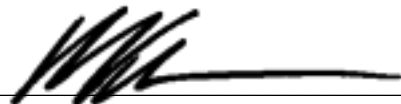
25 ///

1 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF
2 THE SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT
3 3.769, THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS
4 OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE
5 FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING
6 JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND
7 THE JUDGMENT THEREON.

8
9 IT IS SO ORDERED.

10
11 DATED: 07/25/2023




HONORABLE KENNETH R. FREEMAN
SUPERIOR COURT JUDGE
Kenneth R. Freeman/Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is manderson@justicelawcorp.com

On July 26, 2023, I served the foregoing document described as

AMENDED ORDER OF FINAL APPROVAL AND JUDGMENT

for the following case: **Mata, et al. v. Day-Lee Foods Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM- 832069-21**
Court Case No.: 20STCV21664
Los Angeles County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 26, 2023, at Pasadena, California.



Mariah Anderson